

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KEVIN O'BRIEN, ESQ.,

Plaintiff,

v.

D. CHRIS COOK, et al.,

Defendants.

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Case No. 20-cv-2406

Judge Algenon L. Marbley

Magistrate Judge Elizabeth A. Preston Deavers

**JOINT AND UNOPPOSED MOTION TO DROP AND DISMISS ALL CLAIMS
AGAINST DEFENDANTS D. CHRIS COOK, ADOLFO A. TOMICHIO, AND PEGGY
SCHMITZ**

Pursuant to Federal Rule of Civil Procedure 21, Plaintiff Kevin O'Brien and Defendants D. Chris Cook, Adolfo A. Tomichio, and Peggy Schmitz (the "Board Defendants"), jointly move the Court to dismiss, with prejudice, all claims pending against the Board Defendants.

Plaintiff filed this lawsuit on May 13, 2020, against the Board Defendants and Defendants Kent Markus, Bryan Griffith, and Russell Kutell, the three lawyers assigned to prosecute the disciplinary proceeding that was previously pending against Plaintiff. Doc. 1. After all defendants moved to dismiss the complaint, the Court declined to exercise jurisdiction and stayed the matter until the underlying disciplinary proceeding was resolved. Doc. 23.

On July 15, 2024, the Board Defendants dismissed the pending disciplinary action against Plaintiff after the Supreme Court of Ohio accepted Plaintiff's application to resign from the practice of law. *See generally* Doc. 31. The Board Defendants moved to lift the stay (*id.*), which the Court granted on October 15, 2024 (Doc. 32). On October 24, 2024, the Board Defendants moved to dismiss Plaintiff's claims against them because the claims are moot. Doc. 33. Plaintiff

and the Board Defendants now jointly move to drop the Board Defendants from this matter and dismiss all claims against them.

The Sixth Circuit interprets Rule 41 as permitting a plaintiff to dismiss only the entire action, not individual claims or parties. *Igo v. Sun Life Assurance Co. of Canada*, 652 F. Supp. 3d 929, 936 (S.D. Ohio 2023). Thus, Rule 21 is the appropriate vehicle for dropping some, but not all, parties to an action. *See A.S. v. Mapleton Loc. Sch. Dist.*, 2024 U.S. Dist. LEXIS 167861, *2 (N.D. Ohio Sep. 18, 2024) (“Rule 41 applies to actions, not individual claims or parties.”). Nevertheless, “when evaluating a motion for dismissal under Rule 21, courts should consider Rule 41 standards as guidance for analyzing potential prejudice to the nonmovants.” *Igo* at 936. Dismissal of a party under Rule 21 is within the discretion of the Court. *See Hiller v. HSBC Fin. Corp.*, 589 Fed App’x 320, 321-322 (6th Cir. 2015) (per curiam).

Here, Plaintiff and the Board Defendants agree that dismissal will not result in prejudice to the Board Defendants. Indeed, the Board Defendants moved the Court to dismiss Plaintiff’s claims against them because Plaintiff’s claims are moot. Doc. 33.

Accordingly, because good cause exists to drop the Board Defendants from this action and doing so will not prejudice the Board Defendants, the parties request that the Court exercise its discretion to dismiss the Board Defendants from this matter with prejudice.

Jointly and Respectfully Submitted,

/s/ Kevin J. O’Brien (consent via email)

Kevin J. O’Brien
597 High Street
P.O. Box 297
Worthington, Ohio 43085
Tel: 614-224-3080
kevin@ohiolaw1.com

Plaintiff

/s/ Heather L. Buchanan

HEATHER L. BUCHANAN (0083032)

Assistant Attorney General

Constitutional Offices Section

30 East Broad Street, 16th Floor

Columbus, Ohio 43215

Tel: 614-466-2872 | Fax: 614-728-7592

Heather.Buchanan@OhioAGO.gov

*Counsel for Defendants D. Chris Cook, Adolfo A.
Tomichio, and Peggy Schmitz*

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2025, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Heather L. Buchanan

HEATHER L. BUCHANAN (0083032)

Assistant Attorney General